

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
JUNE 23, 2004 – FINAL SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 23, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Ray Dwyer
Walter Tarmann

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Town of Merton Board of Adjustment
Tina and Tom Stapelfeldt, BA04:047, petitioner
Don Blatnik, Jr., BA04:046, petitioner
Rick and Melissa Reith, BA04:042, petitioners
Claude L. Schilling, BA04:041, neighbor to the south
Gary Paulsen, BA04:044, petitioner
Kathy Carter, BA04:042, Court Reporter
James Kopet, BA04:041, petitioner
Ross Notham, BA04:043, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I move we approve the Summary of the Meeting of June 9, 2004.*

The motion was seconded by Mr. Bartholomew and carried with four in favor; Mr. Dwyer, as an alternate Board Member, abstained for the reason of not being in attendance at the June 9, 2004 meeting.

NEW BUSINESS:

BA04:044 GARY PAULSEN

Mr. Schultz *I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The addition shall not be located any closer to the side lot lines than the existing residence as measured to the outer edges of the walls, provide the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.
2. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for a special exception from the offset requirements, with the recommended conditions, will permit the construction of an addition to the existing residence. The proposed addition will be no closer to the lot lines than the existing residence and will conform to all other requirements of the Ordinance. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:046 DONALD BLATNIK JR.

Mr. Tarmann

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report. In addition, I move that the Board of Adjustment will consider hearing a new proposal by the petitioner for a garage or garage addition under old business.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Although the environmental corridor zoning, the topography, and the location of the septic system are limiting factors on the property, the existing residence contains a three-car garage. In addition, it would be possible to construct the proposed garage in a conforming location on the roadside of the residence. Therefore, the approval of the request for variances from the offset and road setback requirements of the Ordinance would not be in conformance with the purpose and intent of the Ordinance.

BA04:047 RICK AND KATHY SCHEFFLER – OWNER (Stapelfeldt Builders - Petitioner)

Mr. Dwyer

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The residence and attached garage, including the deck and patio, must be located at least 75 ft. from the ordinary high water mark of Lower Nemahbin Lake, 50 ft. from the 100-year floodplain, 15.75 ft. from the base setback line of Elm Street and must be located at least 11.6 ft. from the east and west lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the lake, and 100-year floodplain as the overhangs exceed two (2) ft. in width. The floor area ratio must not exceed 19.5%.
2. The natural grade of the closest point of the proposed additions and decking to the 100-year floodplain and decking must be at least 3 ft. above the 100-year floodplain elevation. The elevations shall be shown on a scaled Plat of Survey.
3. All existing structures including the residence, detached garage and boathouse must be removed prior to the expiration date of the Zoning Permit to be issued for the proposed residence and attached garage.
4. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, decks, patios and any other appurtenances, including retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed residence does not result in adverse drainage onto adjacent properties or the road. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following

information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan, including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variance from the 100-yr. floodplain setback, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. Our Department does not feel that the proposed residence would negatively impact the natural resources or surrounding area, due to the construction being required to be located greater than the required shore setback and more than 3 ft. above the 100-year floodplain elevation. In addition, the proposed residence meets all of the other locational requirements of the Ordinance. Therefore the proposal, as conditioned, would be in conformance with the spirit and intent of the Ordinance.

BA04:041 JAMES KOPET

Mr. Bartholomew

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Tarmann and carried with four in favor and one opposed.

The staff's recommendation was for approval, with the following conditions:

1. The total floor area on the property must not exceed a total of 3,030 sq. ft., with the residence and attached garage not to exceed 2,640 sq. ft. as was previously approved by BA00:012. This will result in a total floor area ratio of 20.14%.
2. The proposed construction must be no closer than the existing house to the north lot line, and must be a minimum of 75' from the shore and floodplain of Moose Lake and a minimum of 50' from the established road right-of-way of Hasslinger Drive. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the road and the lake as the overhangs exceed two (2) ft. in width.
3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division Staff.
4. Prior to the issuance of a Zoning Permit, a stakeout survey with elevations showing the location of the residence, the proposed garage addition, and the patio in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

5. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. The portion of the property on the west side of Hasslinger Drive and the portion of the property on the east side of Hasslinger Drive must be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Merton and the Waukesha County Planning and Zoning Division Staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
7. In order to ensure the construction of an addition and the remodeling to the residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for variance from the floor area ratio and remodeling a non-conforming structure in excess of 50% of its fair market value as well as approval of a special exception from the offset requirements, with the recommended conditions will permit the construction of an addition, deck, patio and remodeling to the existing residence. The proposed construction would not be any closer to the north lot line than the existing residence. By combining the lots, the petitioners will be allowed to construct a 2,640 sq. ft. residence with an attached garage on the west side of Hasslinger Drive, which is reasonable for the area in question. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions is in conformance with the purpose and intent of the Ordinance.

BA04:043 ROSS NOTHAM

Mr. Schultz

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The total accessory building floor area on the property must not exceed a total of 487 sq. ft. This will provide an accessory building floor area ratio of 4.5% as proposed.
2. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division Staff.
3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for variance from the accessory building floor area ratio and open space requirements with the recommended conditions will permit the construction of a detached garage. The property currently does not contain a garage or basement for storage and the proposed garage is a reasonable size and meets all of the locational requirements of the ordinance and will afford more needed storage space. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:042 RICHARD P. REITH (Held in abeyance from June 9, 2004)

Mr. Bartholomew *I make a motion to delay issuing a decision until the meeting of July 28, 2004, to allow time to obtain a legal opinion from the Waukesha County Corporation Counsel's office regarding Atty. Maureen A. McGinnity's interpretation of Section 3.15 (2) (A), (Non-conforming structures) of the Waukesha County Shoreland and Floodland Protection Ordinance.*

The motion was seconded by Mr. Tarmann and carried unanimously.

ADJOURNMENT:

Mr. Bartholomew *I move we adjourn this meeting at 8:15 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment